NTCA

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
The Voice of Rural Telecommunications
www.ntca.org

May 23, 2002

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street S.W., TW-A325
Washington, D.C. 20554

Re: *Ex Parte* Notice
In the Matter of the Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket 00-256; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, CC Docket No. 98-77; and Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket No. 98-166

Dear Ms. Dortch:

On Thursday, May 23, 2002, Commissioner Kathleen Abernathy and Matthew Brill met with L. Marie Guillory and Jill Canfield of the National Telecommunications Cooperative Association (NTCA). We discussed issues related to NTCA's petition for reconsideration in the above-referenced proceeding. We specifically discussed NTCA's request that the Commission: (1) suspend and review its rule that provides identical Interstate Common Line Support (ICLS) to competitive eligible telecommunications carriers (CETCs) based on incumbent rural local exchange carrier (RLEC) costs, and (2) permit RLECs to forego the SLC increase on Centrex lines to public institutions providing essential education, health and safety services in RLEC service territories. We also discussed issues raised in NTCA's petition for reconsideration of the Fourteenth Report and Order in CC Docket No. 96-45.

During the discussion NTCA distributed a document to Commission Staff outlining the reasons why the Commission should suspend the implementation of the rules pending a review. In addition, NTCA provided a copy of the results of its survey on Centrex.

In accordance with the Commission's rules, an original and two copies of this letter are being filed with the Secretary's Office. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

/s/ L. Marie Guillory
L. Marie Guillory
Vice President
Legal and Industry

Enclosures

cc: Commissioner Kathleen Abernathy
Matthew Brill

REASONS FOR SUSPENDING IMPLEMENTATION OF IDENTICAL ICLS TO CETCs PENDING REVIEW

1. **The Commission Cannot Verify That CETCs Will Use ICLS Only for the Purposes Intended.** Interstate Common Line Support (ICLS) dollars are intended to recover a rate-of-return (RoR) rural local exchange carrier's (RLEC's) actual cost of providing non-traffic sensitive facilities to interexchange carriers (IXCs). ICLS is the residual that recovers the RLEC's common line revenue requirement previously recovered in the carrier common line (CCL) charge. **Under the existing ICLS rules, competitive eligible telecommunications carriers (CETCs) and incumbent RLECs would receive identical ICLS.** The rules, however, do not provide the Commission with a means to verify how a CETC uses its identical ICLS and whether the ICLS distributed to it complies with the use and sufficiency requirements in Section 254(e). CETCs, particularly wireless carriers, neither provide the same interstate access services to consumers, use the same facilities to provide the services, nor incur the same costs for providing the services. Wireless carriers incur virtually none of the interstate access costs relevant to the ICLS mechanism because they have no wireline local loops on which the mechanism is based. Also, unlike RLECs, wireless carriers do not offer equal access to long distance carriers.

2. **CETCs Receiving Excessive ICLS Would Have an Unfair Competitive Advantage**. When a low-cost CETC receives ICLS based on a high-cost, RLEC's facilities, the low-cost CETC will receive an excessive amount of ICLS. Consequently, the low-cost CETC could use its surplus ICLS to compete unfairly against the incumbent RLEC. *Texas Office of Public Utility Counsel v. FCC,* 183 F.3d at 412 (U.S.C.A. 5th Cir. 1999) ("Excessive funding may itself violate the sufficiency of the Act"). In addition, some CETCs are exempt from rate and state entry regulation allowing them to avoid the substantial costs associated with carrier-of-last-resort obligations, service quality requirements, cost-studies, rate cases, accounting obligations, separations requirements, audit reviews, and other state and federal regulatory mandates.

3. **Uneconomic and Artificial Competition.** The current ICLS rules create an artificial incentive for competition in some rural study areas where the economic foundations would not otherwise support more than one provider. "I am hesitant to subsidize multiple competitors to serve areas in which the costs are prohibitively expensive for even one carrier. This policy may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area leading to inefficient and/or stranded investment and a ballooning universal service fund." *MAG Order*, *Separate Statement of Commissioner Kevin J. Martin.* Sustainability of rural high-cost support is at stake because the ICLS mechanism could add an estimated 20 percent in additional ICLS to CETCs potentially swelling rural high-cost support to questionable levels. In the fourth quarter 2001, U.S. Cellular received more than $762,000 per month in high-cost universal service support. This amounts to more than $9 million in support on an annualized basis. *NTCA Petition for Reconsideration,* p. 8-9 (Dec 31, 2001).

4. **Multiple Carriers Can Receive ICLS Support for the Same Customer at the Same Time.** The current ICLS rules appear to allow for multiple carriers to receive ICLS support for providing competing services to the same customer at the same time (e.g., customer receives wireline service from the RLEC, and wireless service from a CETC simultaneously). The Act, however, does not require consumers to receive supported services from more than one provider at the same time.

5. **Potential Disincentive to Invest in Rural Infrastructure.** The identical ICLS creates a disincentive for RLECs who may consider not investing in their networks because the more they invest, the more attractive their ICLS becomes to a CETC. "It is essential that any regime we adopt increases certainty so that rural carriers can plan for the future and undertake necessary investment to modernize the telecommunications infrastructure in their communities. I am concerned by the claims that this order will, to the contrary, increase uncertainty for rural carriers, impending infrastructure investment and broadband deployment." *MAG Order, Dissenting Statement of Commissioner Michael J. Copps.*

6. **The Commission Contemplated that Section 254(e) Would Be Enforced by Limiting Support to CETCs that Capture or Add New Customers in a RLEC study Area.** A CETC is eligible to receive support when it "**captures** an incumbent local exchange carrier's (ILEC) subscriber lines or serves **new** subscriber lines in the ILEC's service area."[Emphasis added] 47 C.F.R. § 54.307(a). A "CLEC that qualifies as an eligible telecommunications carrier shall receive universal service support to the extent that it captures subscribers **formerly served by carriers receiving support** based on the modified existing support mechanisms or adds new customers in the ILEC's study area." [Emphasis added]. *In the Matter of the Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, FCC 97-157, First Report and Order, at ¶ 311 (rel. May 8, 1997).

7. **The Commission Should Suspend Implementation of the Identical ICLS Rules Pending Review.** The Commission should delay the implementation of the ICLS rules in order to provide additional time to resolve the following issues concerning: (1) the development of a mechanism to ensure that CETCs receive support based on their own costs; (2) the potential harm caused by using ICLS as an artificial incentive for competition in rural study areas; (3) the impact on the size of rural support; and (4) the increased uncertainty on future RLEC investment plans to modernize their telecommunications infrastructure in rural communities.

NTCA CENTREX SURVEY – 2001

Breakdown of Survey Results
And
Financial Impact on Rural Public Service Institutions

- Survey conducted November-December 2001
- 194 respondents (35% response rate)
- Survey respondents serve 1,357,615 total lines
- Between 2% and 3% of total lines are Centrex
- Approximately 40% of member Centrex lines serve public service institutions, such as hospitals and schools.
- Approximately 1% of total lines served by survey respondents are to public service institutions
- Financial impact on the public services institutions reported in the survey is $43,443 per month or $521,316 per year.
    - Multiplying 1% of respondents' total lines (13,576) by the differential between the $6.00 residential SLC (effective on July 1, 2002) and the $9.20 multi-line business SLC ($3.20) yields $43,443 per month and $521,318 per year.